199931046

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Uniform Issue List: 401.00-00

Person to Contact:

Telephone Number:

Refer Reply to:

Date: OP:E:EP:T:3

Attention:

MAY 10 1999

Legend:

Company A =

Company B =

Company C =

Contractor D =

Facility N =

Plan X =

Dear

This is in response to your request for a ruling, dated June 8, 1998, submitted by your authorized representative concerning distributions from Plan X, in accordance with section 401(k) of the Internal Revenue Code (the "Code"). Letters dated July 27, 1998, September 1, 1998, February 10, 1999, February 19, 1999, and March 12, 1999, supplemented the request.

Company A is an integrated facilities management company and maintains Plan X, a qualified profit-sharing plan under section 401(a) of the Code, with a cash or deferred arrangement described in section 401(k) of the Code.

Company A, a wholly owned subsidiary of Company B employs more than 12,000 professional engineers, technicians, craft employees and operational specialists in all disciplines. Its exclusive focus is to provide facilities management operations to commercial and government entities (the "Customers") in the areas of product management, electrical and mechanical maintenance, security, administrative services, custodial services, roads and grounds, vehicle maintenance, warehousing and distribution services. Each year, Company A enters into numerous contracts with customers to provide

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those facilities management services. One of these contracts was with Contractor D, a governmental entity engaged in operations at various facilities including Facility N. Under its contract with Contractor D, Company A provided for facility management services at Facility N. The employees working under this contract represented no more than a portion of the employees at Facility N.

Company C has replaced Company A in providing some of these facilities management services at Facility N. Effective June 1, 1998, a portion of Company A's facilities management services agreement with Contractor D terminated. Contractor D entered a new service agreement with Company C. Because of the termination of a portion of Company A's contract, Company A discharged all of its employees who performed services under such portion of the contract on June 1, 1998. Many of these employees were then hired by Company C to continue providing facilities maintenance services at Facility N that Company A was previously providing to Contractor D pursuant to this terminated portion of the Agreement. Company C was not obligated to hire the terminated employees. The terminated employees were required to complete an employment application with Company C in order to obtain a job.

Company A, Contractor D, and Company C have always been and do remain separate, and distinct. They are unrelated within the meaning of sections 414(b), (c) and (m) of the Code. There will be no liquidation, merger, transfer of corporate assets, or any other corporate transaction associated with Company A's discharge of the terminated employees.

During their employment with Company A, the terminated employees participated in various employee benefit plans sponsored by Company A, including Plan X. Section 12.2 of Plan X provides, consistent with section 401(k) of the Code, that a participant may receive a distribution of the vested interest in his or her account from Plan X upon "Termination of Employment." "Termination of Employment" is defined in section 2.32 of Plan X to mean "severance of the employee-employer relationship with any Employer or Affiliate by reason of quit, discharge, retirement or death."

Based on the foregoing, you request a ruling that distribution to Company A's former employees from Plan X, by reason of Company A's discharge of such employees will be considered to be made on account of the employees' separation from service within the meaning of section 401(k)(2(B)(i)(I).

Section 401(k)(2)(B)(i) of the Code provides, in relevant part, that distributions from a qualified cash or deferred arrangement may not be made earlier than the occurrence of certain stated events. Section 401(k)(2)(B)(i)(I) further provides that one of these distributable events is "separation from service".

Revenue Ruling 79-336, 1979-2 C.B. 187 provides that an employee will be considered separated from service within the meaning of section 402(e)(4)(A) of the Code only upon the employee's death, retirement, resignation, or discharge, and not when the employee continues on the same job for a different employer as a result of the liquidation, merger, or consolidation, etc. of the former employer (i.e. the "Same Desk Rule"). Revenue Ruling 80-129, 1980-1 C.B. 86 extended this rationale to situations where an employee of a partnership or corporation, the business of which is terminated, continues on the same job for a successor employer formed to continue the business.

In this case, the issue is whether the Same Desk Rule should be applied to the employees who are discharged by Company A and reemployed by Company C. The terminated employees represent no more than a portion of the employees employed at Facility N. Company C was not obligated to rehire the terminated employees. There is no liquidation, merger, transfer of corporate assets or other similar corporate transaction associated with the discharge of those employees. Also, Company A is not related to Company C. Thus, the Same Desk Rule should not be applied here.

Accordingly, based on the facts presented, we conclude, with respect to your ruling request that distributions to Company A's former employees from Plan X by reason of Company A's discharge of such employees will be considered to be made on account of the employees separation from service within the meaning of Code Section 401 (k)(2)(B)(i)(I).

The above rulings are based on the assumption that Plan X will be otherwise qualified under sections 401(a) and 401(k) of the Code, and the related trust will be tax exempt under section 501(a) at the time that the above transaction takes place.

Rulings were also requested raising an issue concerning plans of a taxpayer unrelated to the parties requesting these rulings. We previously informed your authorized representative that we would not address these ruling requests.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Chief, Employee Plans
Technical Branch 3

Enclosures:
Deleted copy of letter
Notice of Intention to Disclose

CC: